

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 571 – SB 686

March 13, 2018

**SUMMARY OF ORIGINAL BILL:** Creates a six member special joint committee (SJC) to study issues relative to this state obtaining primacy over the regulation of surface coal mining and reclamation within its territorial jurisdiction. Requires three members of the House of Representatives and three members of the Senate to be appointed to the SJC. Requires state agencies to provide assistance to the SJC. Requires the SJC to report its findings, recommendations, and any recommended legislation to the 110<sup>th</sup> General Assembly by February 1, 2018. Requires the SJC to be eliminated on February 1, 2018.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$8,200/One-Time

**SUMMARY OF AMENDMENT (014934):** Deletes all language after the enacting clause. Enacts the *Primacy and Reclamation Act of Tennessee*, that implements multiple provisions related to coal mining, including but not limited to the following: a requirement for the Department of Environment and Conservation (TDEC) to serve as the state regulatory authority for surface coal mining and reclamation operations; a requirement for TDEC to adopt rules by emergency rulemaking within 90 days of the effective date of the act; designation of the Board of Water Quality, Oil and Gas as the Board of Energy and Natural Resources; addition of two citizen members appointed by the Governor to the Board, with a requirement the Board promulgates rules consistent with federal law and regulations; a requirement for the state to seek primacy after the bill as amended is enacted and the Governor to seek any federal funding available; the creation of several Class E Felony offenses punishable by fine only for violations of certain provisions of this Act; and declaration that this Act takes effect upon becoming a law for purposes of rulemaking, and eight months after the state is granted primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries for all other purposes.

Authorizes the Commissioner of the TDEC to expend money from the surface mining reclamation fund created by Tenn. Code Ann. § 59-8-326. Authorizes permittees to hear appeals consistent with Tenn. Code Ann. § 59-8-120 who are or may be adversely affected by orders, determinations, rules, permit terms, or rulings of the Commissioner that in any way affect surface coal mining and reclamation operations in this state. Requires the acreage fee to be paid annually as prescribed in rules promulgated by the board under § 59-8-103(b)(1). Requires a coal mining permit to be \$250 and a coal exploration permit to be \$150. Defines “business day” as any day other than a Saturday, Sunday, or legal holiday. Requires permittees to establish and

maintain appropriate records; make monthly reports to the Commissioner; install, use, and maintain any necessary monitoring equipment or methods; evaluate results in accordance with the methods, locations, intervals, and manner that the board prescribes; and provide other information relative to surface coal mining and reclamation operations that the board deems reasonable and necessary under the board.

Changes various references to the Tennessee Board of Water Quality, Oil and Gas, to various acceptable references to the Tennessee Board of Energy and Natural Resources. Requires each operator to remit on or after July 1, 2018, an assessment in the following amount: \$0.04 per ton for coal that is severed from the ground in underground mining operations and \$0.09 per ton for coal that is severed from the ground in surface coal mining and reclamation operations to the Department of Revenue in addition to tax payable under Tenn. Code Ann. § 27-7-104. Requires the assessment to be due and payable in the same manner as the coal severance tax under Tenn. Code Ann. § 67-7-110. Requires all monies received from the assessment to be transferred to the Department of Treasury for deposit in the Coal Mining Protection Fund (CMPF) and to be used for the administration and enforcement of the Act.

Subjects implementation of the Act to the availability of federal funds. Requires the cost of administering and enforcing the Act to be paid in equal proportions by federal funds and funds in the CMPF created pursuant to the Act.

Requires TDEC to report to the General Assembly every two years, beginning January 1, 2020, on the revenue generated from the fees imposed by the proposed legislation and whether an adjustment to the fees is necessary to ensure the proposed legislation is fiscally self-sufficient.

Requires the Governor to take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications to obtain primacy over coal mining.

Requires TDEC to notify the Secretary of State and the Executive Secretary of the Code Commission when TDEC has been approved to exercise primacy over coal mining.

For purposes of the Governor's requirement to apply for funding and approval from the federal government, TDEC's requirement to report to the Secretary of State and the Code Commission, and the severability clause, and creation of the Coal Mining Protection Fund the proposed legislation is effective upon becoming law.

For purposes of making changes to the current laws on coal mining, the proposed legislation is effective upon the deposit of federal funds into the Coal Mining Protection Fund.

For purposes of implementing the *Primacy and Reclamation Act of Tennessee*, the proposed legislation is effective eight months after the Secretary of State receives the required notification from TDEC that TDEC is approved to exercise primacy over coal mining.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Other Fiscal Impact – If federal funds are deposited into the Coal Mining Protection Fund, then the proposed legislation will, on an annual basis: (1) increase federal expenditures up to \$2,496,600, (2) increase state revenue to the Coal Mining Protection Fund up to \$1,811,300, and (3) increase expenditures from the Coal Mining Protection Fund to share the cost of administering and enforcing the Act.**

Assumptions for the bill as amended:

- According to TDEC, this bill as amended will require the Department to establish a program eligible for primacy and to regulate coal surface mining activities and the surface effects of underground mining.
- Currently, the Office of Surface Mining, Reclamation, and Enforcement (OSM) within the Department of the Interior regulates surface coal mining and reclamation activities in Tennessee.
- Federal law (30 C.F.R.731.12 and 731.15) requires a state to demonstrate the capacity to implement, administer, and enforce the Surface Mining Control and Reclamation Act (SMCRA) and federal rules implementing SMCRA including sufficient legal, technical, and administrative personnel and funding for the program.
- The proposed legislation adds two new board members to the Board of Energy and Natural Resources, increasing state expenditures by \$2,240 (\$280 per meeting x 4 meetings x 2 members) in FY18-19; the recurring increase in state expenditures in FY19-20 and subsequent years is estimated to be \$1,120 (\$280 per meeting x 2 meetings x 2 members).
- This bill as amended establishes the fee schedule, including a permit fee and an acreage fee, for permit applications in Section 59-8-107. Based on the OSM annual reports, it is estimated that TDEC will receive three new permit applications per year with fee revenue of \$3,850 each, nine renewals with fee revenue of \$500 each, eight transfer applications with fee revenue of \$350 each, no exploration permit applications, 1 significant revision application with fee revenue of \$2,000 each, and 104 insignificant revision applications or incidental boundary revisions with fee revenue of \$750 each, resulting in total annual application fee revenue of \$98,850 beginning in FY21-22 [(3 x \$3,850) + (9 x \$500) + (8 x \$350) + (1 x \$2,000) + (104 x \$750)]. The Department estimates that FY20-21 revenue will be \$49,425 based on the uncertainty of the actual effective date of primacy.
- TDEC reports that the average issued acreage from Federal FY08-09 through Federal FY12-13 was 20,488. The Department estimates the number of acres submitted with permits and that the acreage was not reclaimed was 4,701. Therefore, the recurring increase in fee revenue beginning in FY21-22 is estimated to be \$597,800 [(20,488 acres x \$20) + (4,701 acres x \$40)]. The increase in fee revenue in FY20-21 is estimated to be \$298,900 (\$597,800 / 2).
- TDEC indicates there will be additional state revenue derived from civil penalties. The increase in state revenue in FY20-21 is estimated to be \$37,200; the recurring increase in state revenue beginning in FY21-22 is estimated to be \$74,400.

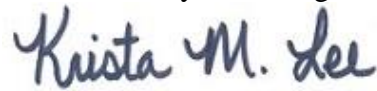
- Based on severance tax collections reported by the Department of Revenue and coal production data published by the U.S. Energy Information Administration, it is estimated that 1,000,000 tons of coal will be severed annually and that half of the coal will be from surface mining operations and half will be from underground operations, resulting in \$65,000 in annual severance tax revenue beginning in FY18-19 [(500,000 tons x \$0.09 per ton) + (500,000 tons x \$0.04 per ton)]. The actual effective date of primacy is uncertain and, therefore, it is estimated that FY18-19 revenue will be \$52,000; and FY19-20 revenue will be \$58,500.
- According to TDEC, the department is estimated to receive a one-time increase of federal funding of \$1,145,808 in FY20-21, and a recurring increase of federal funding of \$975,468 beginning in FY21-22.
- Based on information provided by TDEC, all fee revenue and federal funding received by TDEC will be deposited to the CMPF.
- The total increase in state revenue to the CMPF in FY20-21 is estimated to be \$1,596,333 (\$49,425 + \$298,900 + \$37,200 + \$65,000 + \$1,145,808); in FY21-22 and subsequent years is estimated to be \$1,811,318 (\$98,850 + \$597,800 + \$74,200 + \$65,000 + \$975,468).
- TDEC reports that six new positions will be required in FY18-19, resulting in a recurring increase in federal expenditures and expenditures from the CMPF of \$522,758.
- TDEC reports that an additional 21 positions will be required in the last half of FY19-20. The recurring increase in federal expenditures and expenditures from the CMPF for these positions beginning in FY20-21 is estimated to be \$1,492,849; the increase in federal expenditures and expenditures from the CMPF in FY19-20 (for the half-year impact) is estimated to be \$746,424 (\$1,492,849 x 50% for half-year impact).
- The total increase in federal expenditures and expenditures from the CMPF for a total of 27 TDEC positions in FY19-20 is estimated to be \$1,269,182 (\$522,758 + \$746,424); the total recurring increase in federal expenditures and expenditures from the CMPF for the 26 total TDEC positions beginning in FY20-21 is estimated to be \$2,015,607 (\$522,758 + \$1,492,849).
- In FY20-21, based on the information received from TDEC, it is estimated that there will be a one-time increase in federal expenditures and expenditures from the CMPF of \$340,680 for equipment, supplies, and vehicles, for a total increase in federal expenditures and expenditures from the CMPF in FY20-21 of \$2,356,287 (\$2,015,607 + \$340,680).
- According to the information received from the Attorney General (AG), this bill as amended would require AG's Office to review rules promulgated by TDEC and handle any litigation matters on their behalf, requiring one additional attorney; funding for such position will come from federal funds and funds from the CMPF; the recurring increase in federal expenditures and expenditures from the CMPF beginning in FY20-21 is estimated to be \$140,300.
- Implementation of the Act is contingent upon federal funds being deposited into the CMPF. The proposed legislation requires available federal funds and funds from the CMPF to be used to cover the cost of administration and enforcement of the Act. To the extent federal funds are deposited into the CMPF, the proposed legislation will: (1) increase federal expenditures up to \$2,496,587 (\$2,356,287 + \$140,300); (2) increase

state revenue to the CMPF up to \$1,811,300; and (3) increase expenditures from the CMPF to share the cost of administering and enforcing the Act.

- The proposed legislation requires TDEC to report to the General Assembly every two years, beginning January 1, 2020, on the revenue generated from the fees imposed by the proposed legislation. The report must also include a determination by TDEC as to whether an adjustment to the fees is necessary to ensure the proposed legislation is fiscally self-sufficient.
- TDEC can produce the biennial report within its existing resources.

### **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm